Canton Health Care Center, Inc. and United Food & Commercial Workers Union Local 698, AFL-CIO & CLC, Case 8-CA-16412

21 March 1984

DECISION AND ORDER

By Chairman Dotson and Members Zimmerman and Hunter

Upon a charge filed on 14 January 1983 by United Food & Commercial Workers Union Local 698. AFL-CIO & CLC, herein called the Union, and duly served on Canton Health Care Center, Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 8, issued a complaint on 25 February 1983, and on 1 March 1983 an amendment to the complaint, against the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, amendment to the complaint, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on 21 October 1982, following a Board election in Case 8-RC-12700, the Union was duly certified as the exclusive collective-bargaining representative of the Respondent's employees in the unit found appropriate; 1 and that, commencing on or about 12 January 1983 and at all times thereafter, the Respondent has refused, and continues to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On 9 March 1983 the Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint and setting forth certain affirmative defenses.

On 16 May 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on 11 July 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's Motion for Summary Judgment

¹ Official notice is taken of the record in the representation proceeding, Case 8-RC-12700, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. ν. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

should not be granted. The Respondent thereafter filed a response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this proceeding, the Board makes the following

Ruling on the Motion for Summary Judgment

On 13 August 1982 the Acting Regional Director for Region 8 issued a Decision and Direction of Election. Thereafter, on 26 August 1982 the Respondent filed a request for review alleging, inter alia, that the Civil Service Reform Act of 1978, by its Senior Executive Service provisions, is unconstitutional, inasmuch as it injects "a personal, pecuniary interest to the benefit of the Regional Director," into administration of the Act. On 10 September 1982 the Board issued an order denying the Respondent's request for review on the ground that it raised no substantial issues warranting review or reconsideration of Board policies.²

An election was conducted 14 September 1982. The tally of ballots showed that of approximately 36 eligible voters, 23 cast valid ballots for and 7 against, the Petitioner. There were no challenged ballots. The Regional Director for Region 8, on 21 October 1982, issued a Supplemental Decision and Certification of Representative overruling the Respondent's objections in their entirety and certifying the Union as the bargaining representative of employees in the appropriate unit. On 3 November 1982 the Respondent filed a request for review of the Regional Director's Supplemental Decision. On 30 November 1982 the Board denied the Respondent's request for review.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.³

All issues raised by the Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and the Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Re-

² In denying review, Member Hunter disavowed the Acting Regional Director's discussion of Allegheny General Hospital, 239 NLRB 872 (1978), which he deemed not necessary to the result in that proceeding.

³ See Pittsburgh Glass Co. v. NLRB, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

spondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is, and has been at all times material herein, an Ohio corporation which owns and operates an intermediate care facility in Canton, Ohio. The Respondent annually derives gross revenues in excess of \$100,000 and receives payment for patients from state and Federal governmental sources, including Social Security and Medicare, which funds themselves are transferred directly from points outside Ohio. We find, on the basis of the foregoing, that the Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

United Food & Commercial Workers Union Local 698, AFL-CIO & CLC, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Representation Proceeding

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service and maintenance employees, including nurses aides, laundry employees, housekeeping employees and maintenance employees employed at the Employer's 1223 North Market, Canton, Ohio facility, but excluding licensed practical nurses, all technical employees, dietary employees, office clerical employees, and professional employees, guards and supervisors as defined in the Act.

2. The certification

On 14 September 1982 a majority of the employees of the Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 8, designated the Union as their representative for the purpose of collective bargaining with the Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit 21 October 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request to Bargain and the Respondent's Refusal

Commencing on or about 29 December 1982 and at all times thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about 12 January 1983 and continuing at all times thereafter to date, the Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that the Respondent has, since 12 January 1983 and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and, on request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date the Respondent

commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following

CONCLUSIONS OF LAW

- 1. Canton Health Care Center, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
- 2. United Food & Commercial Workers Union Local 698, AFL-CIO & CLC is a labor organization within the meaning of Section 2(5) of the Act.
- 3. All full-time and regular part-time service and maintenance employees, including nurses aides, laundry employees, housekeeping employees and maintenance employees employed at the Employer's 1223 North Market, Canton, Ohio facility, but excluding licensed practical nurses, all technical employees, dietary employees, office clerical employees, and professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
- 4. Since 21 October 1982 the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.
- 5. By refusing on or about 12 January 1983, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of the Respondent in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.
- 6. By the aforesaid refusal to bargain, the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
- 7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Canton Health Care Center, Inc., Canton, Ohio, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Food & Commercial Workers Union Local 698, AFL-CIO & CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time service and maintenance employees, including nurses aides, laundry employees, housekeeping employees and maintenance employees employed at the Employer's 1223 North Market, Canton, Ohio facility, but excluding licensed practical nurses, all technical employees, dietary employees, office clerical employees, and professional employees, guards and supervisors as defined in the Act.

- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.
- 2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.
- (a) On request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.
- (b) Post at its Canton, Ohio facility copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

⁴ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Food & Commercial Workers Union Local 698, AFL-CIO & CLC as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain with the abovenamed Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time service and maintenance employees, including nurses aides, laundry employees, housekeeping employees and maintenance employees employed at the Employer's 1223 North Market, Canton, Ohio facility, but excluding licensed practical nurses, all technical employees, dietary employees, office clerical employees, and professional employees, guards and supervisors as defined in the Act.

CANTON HEALTH CARE CENTER, INC.